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Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL  
DEFENSE CENTER, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.,

Defendants,

and

CITY OF SALEM and MARION COUNTY,

Defendant-Intervenors.

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Case No.: 3:18-cv-00437-HZ

FEDERAL DEFENDANTS' NOTICE  
REGARDING INJUNCTION ACTION 14  
AND WATER RELEASE STRATEGY

Federal Defendants hereby submit this notice regarding Injunction Action 14, the deep drawdown at Cougar Dam. *See* Interim Injunction, ECF 212 at 4; Cougar Dam Deep Drawdown Implementation Plan, ECF 212-2. This past weekend (November 13 and 14, 2021), there was a storm

event in the Willamette Valley that caused Cougar Reservoir to rise above the target drawdown elevation of 1505 feet (+ or - 5 feet) specified in the implementation plan. *See* Cougar Dam Deep Drawdown Implementation Plan, ECF 212-2 at 5 (“Hold Cougar Reservoir at elevation 1505 ft. from November 15 (or earlier if possible) to December 15, as best as possible.”); *id.* at 4 (“Efforts will be made to maintain el 1505 +/- 5 ft to minimize rapid changes in discharge, or discharges in excess of 800 cfs during the drawdown period, to the extent practical.”). The U.S. Army Corps of Engineers intends to draw Cougar Reservoir back down to 1505 feet (+ or - 5 feet) before the next storm is forecasted to occur. *See* Water Release Strategy for Cougar Reservoir, Attachment 1 at 1. To do so, the Corps must either: (1) implement an operation today or tomorrow that increases outflows through the regulating outlets up to 2,000 cfs, which will cause an exceedance of the State of Oregon’s 110% water quality standard for total dissolved gas<sup>1</sup>; or (2) start the turbines. *Id.* The Corps and National Marine Fisheries Service agree that it is better for salmonids to increase outflows through the regulating outlets rather than starting the turbines. *Id.*<sup>2</sup>

This situation is likely to recur at Cougar Reservoir during the fall deep drawdown anytime there is a storm event. Therefore, the Corps has drafted a water release strategy that it will apply during and after storm events at Cougar Dam moving forward. *See id.* at 1-2. Federal Defendants will file a motion as soon as possible requesting that the Court amend the Cougar Dam Deep Drawdown Implementation Plan to include the water release strategy.

Dated: November 16, 2021

Respectfully submitted,

TODD KIM, Assistant Attorney General  
 SETH M. BARSKY, Chief  
 S. JAY GOVINDAN, Assistant Chief

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<sup>1</sup> Federal Defendants do not anticipate total dissolved gas exceeding 120%.

<sup>2</sup> Moreover, the implementation plan states that the Corps will use regulating outlets “exclusively” from November 15 to December 15 “unless an emergency situation arises.” *Id.*

/s/ Kaitlyn Poirier

KAITLYN POIRIER, Trial Attorney (TN Bar # 034394)

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2021, a true and correct copy of the above document was electronically filed with the Clerk of Court using CM/ECF. Copies of the document will be served upon interested counsel via the Notices of Electronic Filing that are generated by CM/ECF.

/s/ Kaitlyn Poirier

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